IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Crl.O.P.No.38135 of 2004
&
Crl.M.P.No.12040 of 2004

A.Rathinasamy . . Petitioner

Vs.

Housing and Urban Development
Corporation Ltd.,
(Coimbatore Retail Financing Unit)
Represented by its
Deputy Manager,
P.Sundararajan. . . Respondent

The Criminal Revision is filed to quash the proceedings pending in C.C.No.1015 of 2003 on the file of the learned Judicial Magistrate No.II, Coimbatore.

For petitioner :Mr.P.M.Duraiswamy
For Respondent :Mr.Lakshmanasamy

ORDER

The accused in C.C.No.1015 of 2003 on the file of the learned Judicial Magistrate No.2, Coimbatore has brought forth this criminal original petition under Section 482 Cr.P.C. seeking an order quashing the proceedings pending against him in the above said Calendar case which was initiated based on the private complaint made by the respondent herein for an offence punishable under Section 138 Negotiable Instruments Act, 1881.

2. The facts relating to the filing of the above said private complaint are as follows;

i) The petitioner herein was extended financial assistance by the respondent corporation by sanctioning a loan of Rs.1,69,000/- on 14.01.2003 for the purchase of a house site in Erode. The said amount was agreed to be repaid in 96 monthly instalments. In discharge of part of his liability under the said loan transaction, the petitioner herein had issued six post dated cheques with the following particulars;

Sl.No.	Cheque No.	Dated	Amount	Drawn on
1	147644	5/2/03	Rs.4065/-	Bank of Baroda,Erode
2	144321	5/3/03	Rs.4065/-	Karur Vysya Bank,Erode
3	144322	5/4/03	Rs.4065/-	Karur Vysya Bank,Erode

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Sl.No.	Cheque No.	Dated	Amount	Drawn on
4	144323	10/5/03	Rs.4065/-	Karur Vysya Bank,Erode
5	144324	10/6/03	Rs.4065/-	Karur Vysya Bank,Erode
6	144325	10/7/03	Rs.4065/-	Karur Vysya Bank,Erode

ii) When all the six cheques were presented by the respondent corporation for encashment through their bankers, M/s. Canara Bank, Coimbatore on 10.07.2003, the cheques were, however, dishonoured by the drawee bank and returned with the memo dated 18.07.2003 containing the reason "funds insufficient". The fact of dishonour was intimated to the respondent corporation(complainant) by its bankers on 24.07.2003, pursuant to which, the respondent corporation issued a statutory notice on 30.07.2003 calling upon the accused to make the payment towards the dishonoured cheques. As the amount covered by the dishonoured cheques was not paid within 15 days from the date of receipt of notice, the respondent corporation preferred the said complaint admittedly within 30 days after the expiry of 15 days from the date of receipt of the statutory notice.

iii) The complaint was taken on file by the learned Judicial Magistrate, No.2, Coimbatore and registered as a Calendar Case in C.C.No.1015 of 2003 after recording the statement of the complainant under Section 200 Cr.P.C. The present petition is for quashing the said criminal proceedings pending on the file of the said Magistrate.

3. The grounds alleged are;-

i) A single complaint against the dishonour of six cheques is not permissible under Section 219 Cr.P.C.;

ii) There are contradictions regarding the time and the purpose of the issue of the cheques between plaint averments in the suit filed for recovery of the loan amount and the averments made in the complaint;

iii) A bunch of blank cheques, obtained at the time of disbursement of the loan amount to ensure repayment, have been misused by filing the complaint;

iv) As the cheques were issued towards monthly instalments, presentation of all the six cheques together without informing the petitioner led to the situation wherein there was insufficiency of the funds for making payment towards the cheques and hence the petitioner should not be held responsible for the bouncing of the cheques;

v) The presentation of six cheques for encashment within the moratorium period of six months form the date of disbursement of the loan was improper and hence the petitioner cannot be held reasonable for bouncing of all the six cheques; and

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vi) All the cheques had been issued as security for the repayment of the loan regarding which a mortgage suit has been filed and hence the respondent has no locus standi to seek compensation under Section 357 Cr.P.C.

4. The respondent herein/complainant has filed a counter affidavit challenging all the grounds on which the petitioner seeks quashing of the criminal proceedings against him. It has also been contended by the respondent that there is suppression of material facts of the dismissal of the discharge petition filed by the trial Court and the dismissal of the revision petition filed thereto; that the petitioner deliberately suppressed the above said fact knowing fully well that he could not get the relief if the facts were brought to the notice of this Court and that inherent powers of the High Court cannot be invoked to circumvent the bar provided under Section 397(3) Cr.P.C. for a second revision to the High Court by the same person who preferred a revision before the Sessions Judge.

5. The respondent has also contended that since all the six cheques were presented together for encashment and the same were dishonoured simultaneously and a single notice was issued to the petitioner, a complaint preferred for the dishonour of all the six cheques is perfectly in order and that the acts of issuing all the six cheques formed part of one and the same transaction and hence the revision petitioner/accused can be charged with and tried in one trial for all such offences.

6. This Court heard the arguments advanced by Mr.P.M.Duraiswamy, learned counsel appearing for the petitioner and Mr.R.Priyakumar, learned counsel appearing for the respondent and paid its anxious considerations to the same. The materials available on record were also perused by this Court. Upon such a hearing and consideration of the materials available on record, this Court comes to the conclusion that the revision petition shall fail for the reasons hereunder appearing.

7. First of all the criminal original petition is bound to fail on the ground of suppression of material facts. The petitioner has also clearly established that the present petition filed by the petitioner under Section 482 Cr.P.C. suppressing the fact that his application for discharge and the consequent revision petition were dismissed by the learned Judicial Magistrate and the Sessions Judge respectively is nothing but an attempt to circumvent the bar on further revision provided under Section 397(3) Cr.P.C. Admittedly, the petitioner moved an application before the learned Judicial Magistrate praying for an order of discharge and the same was dismissed after hearing both sides and the revision preferred by the petitioner herein was also dismissed by the learned Fast Track Court Judge No.II, Coimbatore. It is pertinent to note that the petitioner has suppressed the said facts in the present petition. Therefore, this Court has to accept the contention of the respondent that the petitioner is guilty not only of suppression of material facts but also of abuse of process of Court and hence the relief sought for in the present petition has to be negatived.

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8. Regarding the scope of inherent power of the High Court under Section 482 Cr.P.C. there are several judgments to the effect that though a second revision to the High Court at the instance of the same person is bared under Section 397(3) Cr.P.C., the inherent power under Section 397(3) Cr.P.C. can be invoked if the circumstances of the case so warrant. But it has also been reiterated that the inherent power should be used sparingly and with circumspection. The inherent power of the High Court provided under Section 482 Cr.P.C is intended to be used against the abuse of process of law, to prevent miscarriage of Justice and to see that the ends of justice are not put in jeopardy. The power which is intended to prevent the abuse of process of law and miscarriage of justice should not be allowed to be misused. The facts and circumstances of the case on hand indicate that the filing of the present petition under Section 482 Cr.P.C. is an example of abuse of process of Court. Hence, this Court is very much convinced that the petition is bound to fail on the ground that the provision meant for preventing abuse of process of Court and miscarriage of Justice is sought to be used as a means by the present revision petitioner for abusing the process of Court.

09. Regarding merits of the case, even though the petitioner has raised several grounds in support of his prayer for quashing the criminal proceedings pending against him on the file of the learned Judicial Magistrate No.2, Coimbatore, the learned counsel for the petitioner confined his arguments to the grounds 1 to 3 alone. The grounds of attack given up by the learned counsel for the petitioner at the time of advancing arguments are:-

> 1) presentation of all the cheques within the alleged period of moratorium;
> 2) contradictions regarding the time and purpose of issuing the cheques; and
> 3) presentation of all the six cheques together for encashment without intimation to the petitioner so as to enable him to make arrangements with the bank for honouring all the cheques.

Perhaps considering the weakness and legal un-sustainability of the said grounds, the learned counsel for the petitioner has chosen not to advert to the above said grounds. Therefore, it is unnecessary to deal with the said grounds and suffice to refer to the other grounds on which arguments have been advanced on behalf of the petitioner.

10. It is the admitted case of both parties that all the six cheques were post-dated cheques and the same were handed over to the respondent herein in discharge of the petitioner's liability towards the respondent in respect of the loan transaction and that the cheques were issued for discharge of the debt/liability of the petitioner on the loan transaction. Whether the demand for repayment could be made within the period of six months from the date of disbursement of the loan and whether there is any agreement between the parties for providing a moratorium of six months from the date of disbursement of the loan are all pertaining to the civil suit, apart

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from the fact that the petitioner has not proved that his liability to repay the loan amount had not arisen till the expiry of six months from the date of disbursement of the loan. Even assuming, without accepting, that such moratorium period was agreed upon by the parties, there is absolutely no prohibition for the debtor to make payments in discharge of the debt even during the alleged moratorium period as the same is nothing but a concession available to the debtor. There are ample evidence and even admission by the petitioner that the cheques in question were issued for the discharge of the debt and the discharge of the liability of the petitioner under the loan transaction. Therefore, without any hesitation, this Court comes to the conclusion that the dishonour of the cheques squarely comes within the mischief of Section 138 Negotiable Instruments Act, 1881.

11. The further contention of the learned counsel for the petitioner is that the respondent having chosen to file a mortgage suit for recovery of the loan amount with interest, was not entitled to proceed with the criminal case for the dishonour of the cheques. It is Trite law that pendency of a suit for enforcing a civil right is not a bar for prosecuting the person for the same act if it amounts to a punishable offence. Though there is no prohibition for prosecuting the drawer of the cheque while simultaneously proceeding against him to enforce his civil liability, there is some substance in the contention that the respondent cannot be awarded compensation under Section 357 Cr.P.C. as he has already instituted a suit for recovery of the amount due under the loan transaction. However, there is no prohibition for awarding compensation under Section 357 Cr.P.C. in cheque-dishonour cases on the ground of pendency of civil suit for recovery of the debt in discharge of which the dishonoured cheques have been issued. Moreover, the pendency of a suit, decree if any passed in the civil suit and the fact of satisfaction of the decree or claim are all relevant factors to be taken into account for taking a decision as to whether any compensation has to be awarded under Section 357 Cr.P.C. and if so, what amount has to be awarded. The said question shall arise for consideration only after finding the accused guilty of the offence charged with. Hence, the contention of the learned counsel for the petitioner that the respondent cannot maintain a claim for compensation under Section 357 Cr.P.C. in the criminal proceedings during the pendency of the civil suit has got to be discountenanced.

12. The further contention of the learned counsel for the petitioner, a vital one, is that the dishonour of each cheque and the subsequent failure to make payment towards the cheque will amount to a separate and distinct offence and hence all the six offences in respect of six cheques cannot be tried together, as Section 219 Cr.P.C. does not permit trial of more than three offences in one and the same trial. Of course Section 219 Cr.P.C. says that not more than three offences of the same kind committed within a span of a year can be tried at one trial. But Section 220 Cr.P.C provides that, if any series of acts so connected together as to form the same transaction contains more offences than one, then he may be charged with and tried at one trial for every such offence. For the sake of convenience Sub Clause (1) of Sections 219 and 220 Cr.P.C. are

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reproduced hereunder;

> 219. Three offences of same kind within year may be charged together:-
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> (1)When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
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> . . . .
>
> 220.Trial for more than one offence._
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> (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

13. In the present case, apart from the fact that all the six cheques were issued in respect of one and the same transaction, all the cheques were presented together for encashment and were dishonoured simultaneously. A single notice was issued by the respondent to the petitioner informing him of the bouncing of the cheques and calling upon him to make payment for the bounced cheques. An offence punishable under Section 138 Negotiable Instruments Act, 1881 is completed only on the failure of the drawer of the cheque to make payment within 15 days after the receipt of notice contemplated under Section 138 Proviso (b) of the Negotiable Instruments Act, 1881.

14. In a similar case in MANJULA vs. COLGATE PALMOLIVE (INDIA) LIMITED, 2006 (5) CTC 303 a Division Bench of this Court, after referring to several judgments of various High Courts, has held that the dishonour of sixteen cheques drawn on different dates when presented together for payment and the issuance of a single lawyer's notice demanding payment of the amount towards all the dishonoured cheques should be construed as a bundle of facts forming a sequence of events will squarely come under the purview of Section 220(1) Cr.P.C and hence is saved from the mischief of Section 219 Cr.P.C. The observations made by the Division Bench of this Court are found in paragraphs 13 and 16. They are reproduced as under:-

> "13. The very object of Section 219, is to prevent miscarriage of justice by clubbing together a number of offences and making it impossible for the accused to defend them. Sections 219 and 220, Cr.P.C. lay down different and distinct exception to the general rule contemplated under Section 218 Cr.P.C. in framing charges. We are of the view that the number of three offences underlined in Section 219 of the Code cannot control Section 220(1) of the Code.
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16. In the case on hand, though the act of issuance of 16 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated. To put it clear, though the giving of cheques by the accused to the complainant may be on different dates, all those acts of giving those cheques were merged together to form the same transaction viz., the presentation of the cheques together was on one particular date. In view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated."

15. The above said observation squarely applies to the case on hand. As the contention raised by the petitioner is the one covered by the aforesaid decision of the Division Bench of this Court, without any hesitation, this Court comes to the conclusion that the contention raised by the learned counsel for the petitioner in this regard is liable to be rejected as untenable. Viewed from any point, there is no merit in the criminal original petition seeking quashing of the criminal proceedings initiated against him in C.C.No.1015 of 2003, on the file of the learned Judicial Magistrate, No.2, Coimbatore. The petitioner has miserably failed to make out a case for quashing the said criminal proceedings and the criminal original petition filed under Section 482 Cr.P.C. deserves to be dismissed. Accordingly, this Criminal Original Petition shall stand dismissed. Consequently, connected miscellaneous petition is closed.

jikr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Judicial Magistrate, No-1
Coimbatore.
KG (co)
sg 24/01/08

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